EDITOR'S NOTE

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91-6824

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

UNITED STATES OF AMERICA,

Respondent,

v.

**GLORIA ZAFIRO, JOSE MARTINEZ,
SALVADOR GARCIA, ALFONSO SOTO,**

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Was the Seventh Circuit Court of Appeals correct in ruling that under Rule 14 of the Federal Rules of Criminal Procedure, that two defendants are not entitled to severance when it is certain that one, but not both committed the crime and the only uncertainty is which one, which is contrary to the Seventh Circuit's previous decision in United States v. Ziperstein, 601 F.2d 281 (7th Cir. 1979), the Eleventh Circuit's decIsion in Smith v. Kelso, 863 F.2d 1547 (11th Cir. 1989) and the Fifth Circuit's decision in United States v. Romanello, 726 F.2d 173 (5th Cir. 1984).

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PRAYER FOR RELIEF

Petitioners Gloria Zafiro, Jose Martinez, Salvador Garcia and Alfonso Soto pray that a Writ of Certiorari be issued to review the Judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause on September 26, 1991.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at _____ F.2d _____. This opinion is printed in the appendix (A.1) to this petition. The United States District Court for the Northern District of Illinois did not issue a written opinion in this case. The judgment appealed from is contained in the appendix (A.2) to this petition.

JURISDICTION OF THIS COURT

The Seventh Circuit Court of Appeals issued its opinion in this matter on September 26, 1991. No petition for a rehearing was filed in this matter. This petition was filed within 90 days after the entry of the Seventh Circuit's decision in this matter. This court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Rule 14 of the Federal Rules of Criminal Procedure authorizes a trial court to sever defendants for separate trials:

> "If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the Court may order an election or separate trial of counts, grant a severance of defendants or provide whatever other relief justice requires." [emphasis added]

STATEMENT OF THE CASE

Defendants were charged in the United Court for the Northern District of Illinois, Eastern Division, with having conspired to possess cocaine, heroin and marijuana with intent to deliver in violation of 21 U.S.C. 841(a) and 846 and possession of cocaine, heroin and marijuana with intent to distribute in violation of 21 U.S.C. 841(a).

Prior to trial, Soto and Martinez moved for a severance pursuant to Rule 14 of the Federal Rules of Criminal Procedure. (Soto R. 45; Martinez R. 80; Trial Tr. 4-5) Judge Bua, however, denied both motions. (Soto R. 66; Trial Tr. 6) Counsel for Garcia made motions for mistrial and renewed motions for a mistrial based on trial testimony. (Trial Tr. 444, 614-15, 748, 831, 881)

Defendants were jointly tried to a jury, which found Jose Martinez, Alphonso Soto and Salvador Garcia guilty of each count which they were charged. Gloria Zafiro was found guilty of conspiring to possess cocaine, heroin and marijuana with intent to distribute, but not guilty of the substantive counts of possession of cocaine, marijuana and heroin with intent to distribute.

Gloria Zafiro, Alphonso Soto and Salvador Garcia were sentenced to one hundred fifty one (151) months imprisonment, to be followed by a five (5) year term of supervised release.

Jose Martinez was sentenced to two hundred sixty two (252) months imprisonment, to be followed by a five (5) year term of supervised release.

Defendants timely filed their Notices of Appeal with the

Seventh Circuit Court of Appeals on November 17, 1989, November 30, 1989, December 15, 1989 and December 6, 1989, respectively. The Seventh Circuit Court of Appeals affirmed the Defendants convictions by an opinion issued on September 26, 1991.

ARGUMENT

Under Supreme Court Rule 10, this Court has listed three general areas that would warrant granting a Writ of Certiorari. One of these reasons is a conflict between the decision of the circuit court and other circuits, or a conflict between the circuit court and opinions of this court, or has otherwise so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision. Supreme Court Rule 10.1(a); Crane v. Kentucky, 476 U.S. 683, 687 (1986).

In this case, the decision of the Seventh Circuit is directly contrary to the long-standing legal rule that mutually antagonistic defenses are grounds for a severance under Rule 14. Indeed, the opinion of the court conceded that the decision was contrary to well-established legal principles. See, Slip op. at 3-4.

While the general rule is that persons jointly indicted should be jointly tried, thus promoting judicial efficiency, where there is a risk of prejudice to one party, severance should be granted. United States v. Lane, 474 U.S. 438, 449 n.12 (1986); United States v. Snively, 715 F.2d 260 (7th Cir. 1983), cert. denied 465 U.S. 1007 (1984).

Severance pursuant to Rule 14, is appropriate where co-

defendants have antagonistic defenses. United States v. Oglesby, 764 F.2d 1203 (7th Cir. 1985). Severance should be granted where acceptance of one defendant's defense precludes acceptance of the other defendant's defense. United States v. Buljubasic, 808 F.2d 1260, 1263 (7th Cir. 1987); United States v. Gironda, 758 F.2d 1201, 1220 (7th Cir. 1985).

The Seventh Circuit in this case concluded that these well-established principles did not apply, because this was a case of mere "finger-pointing" where one Defendant attempted to shift blame to another. However, a review of the facts in this case belies this assumption by the Seventh Circuit. Instead, this was a case where the Government heavily relied upon the co-defendants' antagonistic defenses to obtain a conviction.

This was particularly true in the case of Jose Martinez. As long as the Government could defeat a Motion for Judgment of Acquittal pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure at the close of its case in chief, co-defendant Gloria Zafiro's defense virtually assured a conviction of Martinez. The cross-examination of the Government's second witness, Maria Viera highlights the antagonism between these two defendants' positions. Objecting to Martinez's cross-examination of Viera, Zafiro's attorney stated that:

> "I believe the evidence will show that this lady had three kilos of cocaine in her car which was registered to her. That at the time of the incident, as a result and I believe there was no arrest of her; she was not prosecuted for whatever reason, I think that is a proper approach to take, and it is merely by an accident in geography that my client whose residence was used as a storage by the co-defendant, and, therefore, inculpated

my client by his presence in her home, I think the jury could reasonably infer from that behavior, the keeping of her, the maintaining of the residence, buying her cars, supplying her food, which I believe the evidence will show is exactly the same scenario as my client had, yet, this lady, for whatever reason, is not prosecuted nor arrested. And I think the analogy is exactly the same. My point is my client should not be here, because the only reason she is here is that Jose Martinez stored his cocaine and other items at her residence, unbeknownst to her and without her active participation" (Trial Tr. p. 80).

It is noteworthy that Zafiro's attorneys closing argument continually analogized Gloria Zafiro to Maria Viera, in that each were used by Jose Martinez so he could store narcotics in their property. (Trial Tr. 783-785, 789)

Gloria Zafiro testified that the burgundy suitcase which contained the cocaine, marijuana and heroin which formed the basis for counts 2, 3 and 4 of the indictment was brought into her apartment by Jose Martinez two (2) days prior to their arrest. Further, she testified that she had no idea what was in the suitcase and never handled it. (Trial Tr. 57, 75, 86, 346-347, 518-519, 542-543, 567, 579, 322-323, 326-328).

In fact, Zafiro testified that she had seen the suitcase inside the bedroom closet. (Trial Tr. 542-543). The suitcase, however, was found outside the closet. (Trial Tr. 347, 356).

Zafiro also testified that the bag which contained approximately $22,000.00 in United States currency was brought into her apartment the morning of their arrest by Jose Martinez. (Trial Tr. 57, 86, 273, 348, 358, 363, 520-521, 545, 571, 574, 576, 880).

Zafiro testified that Martinez asked her to safeguard the bag, which she believed contained Tavern proceeds. Although she

testified she placed the bag on top of a knapsack in her closet, the currency was found inside the knapsack in the bedroom where Martinez had been sleeping. (Trial Tr. 57, 86, 273, 348, 358, 363, 520-524, 542-549, 571-576).

What Gloria Zafiro told that jury was that she was being used by Jose Martinez, who without her knowledge brought and was bringing narcotics and currency into her apartment, and while purportedly sleeping handled the narcotics and currency.

Gloria Zafiro did not stop there, however. She testified that on two (2) occasions on February 22, 1989, strangers came to her apartment to see Jose Martinez. Each time she testified she had no conversation with them other than to say Jose was asleep. (Trial Tr. 535-529, 549-550, 556-559, 572).

According to Gloria Zafiro when Soto and Garcia arrived sometime later that day, they were carrying a box which contained cocaine. To no one's surprise, they again ask for Jose Martinez. Zafiro testified she went into the bedroom to make the bed and had no idea what was going on. (Trial Tr. 529-530, 550-551, 571-573, 580-584).

Jose Martinez denied the charges against him and elected not to testify nor present evidence. Specifically, he denied any knowledge of the heroin, cocaine, marijuana and currency in Zafiro's bedroom and denied any knowledge of the cocaine which was in the box carried by Soto and Garcia. His theory of defense was that he was in the wrong place at the wrong time, and that his mere presence provided Zafiro the opportunity to protect herself by

casting the blame on him. (Trial Tr. 796-797, 801, 304, 806).

It is respectfully asserted that acceptance of Zafiro's defense, that without her knowledge Martinez brought and arranged to bring narcotics into her house precluded acceptance of Martinez' defense, that without his knowledge Zafiro had narcotics in and was having narcotics delivered to her house.

Had the district court severed Zafiro and Martinez' trials, the jury never would have heard Zafiro's prejudicial and biased testimony.

Similarly, Defendant Garcia was prejudiced by his inclusion in the case with his co-Defendant Soto. One of the witnesses, Maurice Dailey, testified that on February 22, 1989, a surveillance was conducted by Dailey and several other officers under his supervision, at 1925 South 51st Court in Cicero, Illinois (Trial Tr. 42). Dailey observed a maroon Buick, identified to have been driven by Alfonso Soto (Trial Tr. 45), pull from the front of the residence and was followed by several persons on the surveillance team (Trial Tr. 44) to 3517 West 38th Street (Trial Tr. 46). Dailey further stated that at this time, Appellant Garcia joined Soto (Trial Tr. 48). Thomas Bridges, witness for the government, testified that he saw Soto and Appellant Garcia leave the premises of 5317 West 38th Street carrying a brown cardboard box (Trial Tr. 269). Dailey also related that the two gentlemen returned to the original residence at 1925 South 51st Court in Cicero (Trial Tr. 48).

Dailey stated that he was witness to Soto and Appellant Garcia

carrying this large cardboard box up the stairs (Trial Tr. 49). It was at this time that Dailey announced he was a police officer (Trial Tr. 49), and chased Soto and Garcia into an apartment where Jose Martinez and Gloria Zafiro were residing (Trial Tr. 50). Dailey discovered that the contents of the box Soto and Garcia was carrying, was twenty seven packages of cocaine (Trial Tr. 52), (Trial Tr. 58). At this time, Dailey arrested Garcia and the three other individuals above mentioned (Trial Tr. 53), and directed two other officers to return to 3517 West 38th Street and wait until they received a search warrant for that location (Trial Tr. 53).

When the officers arrived at that residence which belonged to Soto (Trial Tr. 304), a woman answered the door and consented to a search of the place and the officers found a scale known to be used when packaging drugs (Trial Tr. 54). Dailey continued his testimony by revealing that after going into the garage and opening the trunk of a black Ford Probe which was registered to a Maria Vera (Trial Tr. 162), he found a duffel bag with taped packages within it that was later determined to have contained cocaine (Trial Tr. 55). The keys for the Ford Probe were found on the person of Soto (Trial Tr. 56). Dailey further related that a search warrant was issued for the residence on 1925 South 51st Court (Trial Tr. 56), and a suitcase was discovered to contain marijuana, heroine and cocaine (Trial Tr. 58).

Dailey testified to have found a drivers license and voters registration card of Appellant Garcia with the address 5317 West 38th Street on them (Trial Tr. 66), yet further testified that the

drivers license was issued July 31, 1985 and expired April 4, 1989 (Trial Tr. 147) and the voters registration card was from 1987 (Trial Tr. 148). Dailey verified that appellant Garcia did, at one time, own the house on 38th Street, but Appellant Garcia sold it (Trial Tr. 146).

Garcia's defense was that he was never actually in possession of the cocaine, (Trial Tr. 839), and that the possession of the cocaine was co-defendant Soto, was legally, factually, and logically rebutted by the actual defense and trial testimony of Soto who testified that the Appellant Garcia was the mastermind and knowing possessor of the cocaine, (Trial Tr. 663-664).

In this case, presenting Appellant Garcia's defense under the circumstances of facing both the government and second prosecutor (Soto), the likelihood of confusion and the resulting denial of a fair trial was inexcusable. See, United States v. Ziperstein, 601 F.2d 281, 285 (7th Cir. 1979) and United States v. Romanello, 726 F.2d 173, 174, 182 (5th Cir. 1984). The seventh circuit's opinion completely ignores these facts presented by Garcia, and fails completely to mention either Ziperstein or Romanello.

This omission by the seventh circuit is not surprising, for the opinion in this case must either overrule ignore Ziperstein. This case is close to the situation mentioned by the seventh circuit in United States v. Ziperstein, 601 F.2d 281 (7th Cir. 1979):

> An example of "mutually antagonistic" defenses is presented in DeLuna v. United States, 308 F.2d 140 (5th Cir. 1962). In DeLuna one defendant claimed that he came into possession of narcotics only when the other

> defendant saw the police approach and shoved the drugs into his hands. The other defendant, however, denied having ever possessed the drugs and claimed that they had always been in the possession of the first defendant. In a case such as DeLuna, where someone must have possessed the contraband, and one defendant can only deny his own possession by attributing possession and consequent guilt to the other, the defenses are antagonistic. 601 F.2d at 285 (7th Cir. 1979)

Accord, Smith v. Kelso, 863 F.2d 1564, 1569-1571 (11th Cir. 1989).

Likewise, in United States v. Romanello, 726 F.2d 173 (5th Cir. 1984), the Fifth Circuit in the colorful language of Judge Goldberg made the following salient comments on the antagonism of defenses and defendant and the effects of such a situation upon a fair trial:

> Conspiracy trials, with their world-girdling potential, are given more extensive thrust by the admission of hearsay testimony, the use of conspiratorial acts to prove substantive offenses, and the joint trial of defendants. These pressures along threaten to undermine the fair consideration of individual conspiracy defendants. However, the dangers inherent in joint trials become intolerable when the co-defendants become gladiators, ripping each other's defenses apart. Int heir antagonism, each lawyer becomes the government's champion against the co-defendant, and the resulting struggle leaves both defendants vulnerable to the insinuation that a conspiracy explains the conflict. 726 F.2d at 182

And also:

> "I saw a lizard come darting forward on six great taloned feet an fasten itself to a [fellow soul]...[T]hey fused like hot wax, and their colors ran together until neither wretch nor monster appeared what he had been when he began..."[citing Dante, The Inferno, Canto XXV, Circle 8, Bolgia 7, lines 46-48, 58-60 (J. Ciardi, transl)].
>
> The joint trial of conspiracy defendant was originally deemed useful to prove that the parties planned their crimes together. However, it has become a powerful tool for the government to prove substantive

> crimes and to cast guilt upon a host of co-defendants. In this case, we are concerned with the specific prejudice that results when defendants become weapons against each other, clawing into each other with antagonistic defenses. Like the wretches in Dante's hell, they may become entangled and ultimately fuse together in the eyes of the jury, so that neither defense is believed and all defendants are convicted. Under such circumstances, the trial judge abuses its discretion in failing to sever the trials of the co-defendants. 726 F.2d at 174

Either Zafiro had no knowledge of the narcotics and Martinez did or Martinez had no knowledge of the narcotics and Zafiro did. Both positions cannot be true and therefore acceptance of one defense precluded acceptance of the others. Thus, Zafiro and Martinez did not merely say "The other person did it", instead their defenses were "I could not possibly have done it." Whether the co-defendants were present in the case or not, either would have been entitled to trial based upon the facts presented solely against each individual.

Thus, this case is not one where the defendants were offering up another "live body" as opined by the Seventh Circuit. Slip op. at 7. It does a disservice to the doctrine that defendants are entitled to a trial based solely upon the evidence against an individual to reach the conclusion reached by the Seventh Circuit in this case. Instead, this case a case where the Government could, in large part, sit back and let the Defendants' antagonistic defenses prove the Government's case.

The omission of any discussion of this applicable case law can only be explained by the seventh circuit's apparent belief that a trial court's ruling on a severance is never reviewable on appeal.

This belief was expressed by the court when it said

> [t]he argument that a conviction should be reversed because the district judge failed to sever properly joined defendants for trial is nearly always futile even when the defendants can be said to be presenting mutually antagonistic defenses.

Slip op. at 7 (emphasis added). Thus, this panel of the seventh circuit apparently believes that even when the trial court was dead wrong and the defendants should have been severed for trial, no reversal is in order.

This is not the law. This court should accept the Petition for Certiorari to prevent this view of severance and appellate review from spreading. Otherwise, the opinion below will completely eviscerate the law of severance. The doctrine that each defendant is entitled to a fair trial based upon the evidence against him or her will be a hollow, empty, slogan, without effect.

CONCLUSION

The Seventh Circuit's opinion in this case is a substantial departure from the existing law of severance. This court should grant the Petition and issue a Writ of Certiorari to the Seventh Circuit.

Respectfully submitted,

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In the

United States Court of Appeals

For the Seventh Circuit

Nos. 89-3520, 89-3639,
89-3660, 89-3729

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GLORIA ZAFIRO, JOSÉ MARTINEZ,
SALVADOR GARCIA, and ALFONSO SOTO,

Defendants-Appellants.

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 89 CR 165—Nicholas J. Bua, *Judge*.

ARGUED JUNE 14, 1991—DECIDED SEPTEMBER 26, 1991

Before POSNER, MANION, and KANNE, *Circuit Judges*.

POSNER, *Circuit Judge*. The four defendants were tried together by a jury for offenses involving cocaine and other illegal drugs, and all were convicted. José Martinez was sentenced to 262 months in prison and the three other defendants—Alphonso Soto, Salvador Garcia, and Gloria Zafiro—to 151 months each even though the jury had acquitted Zafiro of possession with intent to distribute and convicted her only of participating in, or aiding and abetting, conspiracy. The verdict does not distinguish between actual participation on the one hand and aiding and abetting on the other. At first glance it might seem odd that

there could be (as the cases hold there can be, *United States v. Galiffa*, 734 F.2d 306 (7th Cir. 1984)) separate crimes of conspiracy and of aiding and abetting a conspiracy—for would not the act of aiding and abetting make the aider and abettor a member of the conspiracy? Not necessarily. Suppose someone who admired criminals and hated the police learned that the police were planning a raid on a drug ring, and, hoping to foil the raid and assure the success of the ring, warned its members—with whom he had had no previous, or for that matter subsequent, dealings—of the impending raid. He would be an aider and abettor of the drug conspiracy, but not a member of it. *United States v. Lane*, 514 F.2d 22 (9th Cir. 1975). For the essence of conspiracy is agreement, and there is none in our hypothetical case.

Of the issues raised by the defendants on appeal only two have sufficient merit to warrant discussion. The first is whether the judge should have granted the motions of Martinez, Soto, or Garcia for severance of their trials; the second is whether a reasonable jury could have found Zafiro guilty beyond a reasonable doubt. The government's case was simple. The three male defendants were acquaintances and Zafiro was Martinez's girl friend. The defendants operated a business of distributing illegal drugs at two locations—Zafiro's apartment in Cicero, Illinois, and Soto's bungalow-with-detached-garage in Chicago. One day, government agents followed Soto and Garcia as they transported a large box in Soto's car from Soto's garage to Zafiro's apartment. The agents identified themselves as they followed the two up the stairs to the apartment. Soto and Garcia dropped the box and ran into the apartment, closely followed by the agents, who found all four defendants in the living room. The box contained 55 pounds of cocaine. Another 20 pounds were found in a suitcase in a closet in Zafiro's apartment and in a car in Soto's garage. The car was registered to another girl friend of Martinez's; he had given the car to her as a present but she had never used it.

The basis of the motions for severance by Soto and Garcia was that their defenses were mutually antagonistic. Soto testified that he didn't know anything about any drug conspiracy: Garcia had asked him for a box and he had given it to him; he didn't discover what was in it until it was opened when they were arrested. Garcia did not testify but his lawyer argued in closing argument that it was Soto's box and Garcia had known nothing about it. The basis of Martinez's motion for severance was that Zafiro's defense was antagonistic to his own. Zafiro testified that she was just a girl friend. Martinez stayed in her apartment from time to time, kept some clothes there, and gave her small amounts of money. But when he asked her whether he could store a suitcase in her closet he did not tell her that it contained narcotics and she had no idea it did. Martinez did not testify but his lawyer argued that Martinez had not known that cocaine was going to be delivered to Zafiro's apartment or that the suitcase in the closet contained cocaine; after all, it wasn't his apartment.

The government denies that the defenses of these various defendants were mutually antagonistic but concedes that if they were the defendants would be entitled to separate trials. The government describes this as a case merely of "finger-pointing," which it considers critically different from presenting mutually antagonistic defenses although as an original matter we might have thought that for codefendants to point the finger of guilt at each other was about as forthright a gesture of mutual antagonism as could be imagined. Rule 14 of the federal criminal rules allows severance if a defendant (or for that matter the government) would be "prejudiced" by a joint trial. There is nothing about mutual antagonism. There is nothing, either, to suggest that two defendants cannot be tried together if it is certain that one but not both committed the crime and the only uncertainty is which one—the government's idea of when mutually antagonistic defenses bar a joint trial.

True, a vast number of cases say that a defendant is entitled to a severance when the "defendants present

mutually antagonistic defenses" in the sense that "the acceptance of one party's defense precludes the acquittal of the other defendant," *United States v. Keck*, 773 F.2d 759, 765 (7th Cir. 1985) (though *United States v. McPartlin*, 595 F.2d 1321, 1334 (7th Cir. 1979), denies this proposition), but not when the defendants are engaged merely in "finger-pointing." *United States v. Buljubasic*, 808 F.2d 1260, 1263 (7th Cir. 1987); *United States v. Emond*, 935 F.2d 1511, 1514 (7th Cir. 1991). This formulation has become canonical. But we recall Justice Holmes's warning that to rest upon a formula is a slumber that prolonged means death. The fact that it is certain that a crime was committed by one of two defendants is a reason for trying them together, rather than a reason against, to avoid "the scandal and inequity of inconsistent verdicts." *Richardson v. Marsh*, 481 U.S. 200, 210 (1987). Cf. *United States v. Buljubasic*, *supra*, 808 F.2d at 1263. The analogy of interpleader comes to mind, Fed. R. Civ. P. 22; also such joint-tort cases as *Summers v. Tice*, 33 Cal. 2d 80, 199 P.2d 1 (1948), and *Sindell v. Abbot Laboratories*, 26 Cal. 3d 588, 607 P.2d 924 (1980). And as we said earlier we are not clear why the case in which the acceptance of one party's defense precludes the acquittal of the other defendant could not be regarded as a paradigmatic case of finger-pointing. We must dig beneath formulas.

As an original matter, persons charged in connection with the same crime should be tried separately only if there is a serious risk that a joint trial would prevent the jury from making a reliable judgment about the guilt or innocence of one or more of the defendants. Two situations might fit this bill. The first is that of a *complex* case with *many* defendants some of whom might be only *peripherally* involved in the alleged wrongdoing. The danger is that the bit players may not be able to differentiate themselves in the jurors' minds from the stars. Against that danger must be weighed the interest in trying all members of a conspiracy together so that the jury can get a complete picture and the government can save the expense of conducting multiple trials to break

a single ring. This counterweight has invariably prevailed in the appellate cases, e.g., *United States v. Diaz*, 876 F.2d 1344, 1357-59 (7th Cir. 1989); *United States v. Moya-Gomez*, 860 F.2d 706, 754 (7th Cir. 1988); *United States v. L'Allier*, 838 F.2d 234, 241-42 (7th Cir. 1988); *United States v. Percival*, 756 F.2d 600, 610 (7th Cir. 1985)—we can find no recent reversals on this ground in this circuit, and only a couple in others. *United States v. Engleman*, 648 F.2d 473, 480-81 (8th Cir. 1981); *United States v. Salomon*, 609 F.2d 1172, 1175-77 (5th Cir. 1980). Either appellate courts have faith that the jury will obey instructions to consider the evidence regarding each defendant separately, or they defer to the district judge's judgment that a severance is not required. (They might defer as much to the opposite judgment, but such cases are underrepresented in an appellate sample. When the district judge grants a severance and the defendants go on to trial and are either acquitted or convicted, there is no possibility of appeal—well, almost none. If the government appeals the dismissal of an indictment or some other order made appealable by 18 U.S.C. § 3731, it may be permitted to challenge a severance under the doctrine of pendent appellate jurisdiction. *United States v. Maker*, 751 F.2d 614, 626 (3d Cir. 1984), allowed the government to challenge several severances in such a case, though without mentioning the doctrine or insisting on that close relatedness between the pendent and the independently appealable order that is a central element of the doctrine. *Patterson v. Portch*, 853 F.2d 1399, 1403 (7th Cir. 1988).)

A severance is more likely to be granted, and rightly so, when the defendants are not alleged to be members of a single conspiracy but instead are more loosely related to one another, for then the economies of a joint trial are fewer. *United States v. Velasquez*, 772 F.2d 1348, 1353 (7th Cir. 1985); *United States v. Castro*, 829 F.2d 1038, 1045-46 (11th Cir. 1987). Such cases are rare, however, because different offenders can be joined in a single indictment only "if they are alleged to have participated

in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Fed. R. Crim. P. 8(b). That will ordinarily require that they be charged, or chargeable, either as coconspirators or as aiders and abettors of a conspiracy. *United States v. Velasquez*, *supra*, 772 F.2d at 1353.

The second type of case in which a joint trial is likely to throw the jury off the scent is where exculpatory evidence essential to a defendant's case will be unavailable—or highly prejudicial evidence unavoidable—if he is tried with another defendant. For example, *Bruton v. United States*, 391 U.S. 123 (1968), holds that a limiting instruction is insufficient to dispel the prejudice to a codefendant of being inculpated in a defendant's confession, and in such a case either redaction (*Richardson v. Marsh*, *supra*) or severance may be necessary. And there are cases in which a person would refuse to testify for a codefendant in a joint trial for fear of incriminating himself, yet if tried separately and convicted might thereafter be willing to testify and might give testimony exculpating the other defendant. *Tifford v. Wainwright*, 588 F.2d 954 (5th Cir. 1979) (per curiam). The danger of course is that all the codefendants will want to be tried last, producing impasse.

However that issue be resolved, mutual antagonism, finger-pointing, and other manifestations or characterizations of the effort of one defendant to shift the blame from himself to a codefendant neither control nor illuminate the question of severance. If it is indeed certain that one and only one of a group of defendants is guilty, the entire group should be tried together, since in separate trials all might be acquitted or all convicted—and in either case there would be a miscarriage of justice. We can imagine, if barely, a situation in which all but one of the defendants try to place the blame on that one, so that he finds himself facing in effect a barrage of prosecutors—the official prosecutor and the other defendants' lawyers. Maybe a jury would be misled in such a case, and if the danger was substantial the district judge would be obliged to grant a severance. That is not this case. Each member of each

pair of defendants (Soto-Garcia and Martinez-Zafiro) was accusing the other of being the drug dealer. In this symmetrical situation, each defendant had to defend himself against the prosecutor and one other defendant but at the same time had a live body to offer the jury in lieu of himself (or herself). Soto could say, "Don't convict me, convict Garcia," and Garcia's lawyer could say, "Don't convict my client, convict Soto." This was apt to be a more persuasive line than telling the jury to let everyone go, when the one thing no one could question is that the government had found 75 pounds of cocaine on premises connected with these defendants. No defendant was placed at a *net* disadvantage by being paired with another defendant whom he could accuse and who could accuse him in turn, let alone so disadvantaged as to be unable to obtain a fair trial. Cf. *United States v. Madison*, 689 F.2d 1300, 1306 (7th Cir. 1982). And the benefit of the joint trial went beyond the avoidance of duplication. The jury was given the full picture, which it would not have had if the trial had been limited to two of the four alleged conspirators (one from each pair, since neither Soto nor Garcia complain of being tried with Martinez and Zafiro, and Martinez does not complain of being tried with Soto and Garcia). Joint trials, in this as in many other cases, reduce not only the direct costs of litigation, but also error costs.

We remind the defense bar that they are not obliged to make futile arguments on behalf of their clients. The argument that a conviction should be reversed because the district judge failed to sever properly joined defendants for trial is nearly always futile even when the defendants can be said to be presenting mutually antagonistic defenses.

We come to the second question, that of Zafiro's guilt. There was no direct evidence against her. The drugs were found in her apartment—as was she. If that were all the evidence, we would reverse her conviction with directions to acquit. Our system of criminal justice does not permit the conviction of a person for the crime of aiding and abetting, or for the crime of conspiracy, merely because he

is found on premises where illegal drugs are delivered or kept. *United States v. Atterson*, 926 F.2d 649, 656 (7th Cir. 1991). Suppose Martinez and Zafiro had been married, and, unbeknownst to his wife, Martinez stored narcotics in the house or received deliveries there, or both. Obviously with no knowledge of what was going on she could not be convicted of participating in a drug-dealing conspiracy with him. Nor could she be convicted of aiding and abetting her husband's drug dealing. The crime of aiding and abetting requires *knowledge* of the illegal activity that is being aided and abetted, a *desire* to help the activity succeed, and some *act* of helping. *United States v. Pino-Perez*, 870 F.2d 1230, 1235 (7th Cir. 1989) (en banc); *United States v. Peoni*, 100 F.2d 401, 402 (2d Cir. 1938) (L. Hand, J.). In our hypothetical case not one of the three elements would be present. If the wife did know what was going on but did nothing to help her husband, the second and third elements would be missing and again she would have to be acquitted. Whether she could be convicted of conspiracy would depend on whether she could be found to have agreed to participate in her husband's illegal activity; again, mere knowledge of that activity would not be enough. *United States v. Williams*, 798 F.2d 1024, 1028-30 (7th Cir. 1986).

Does it make a difference if, as here, the wife is not a wife but a girl friend and she lives in her own apartment, not her boyfriend's apartment or an apartment owned or leased jointly by them? It does. If the boyfriend is using her apartment in his drug dealings, then by providing the apartment for his use (whether or not she understands the nature of the use) she is helping his illegal activity, and the third element is satisfied; whereas a wife who merely does not prevent her husband from using their home for illegal purposes does not help his illegal activity in the relevant sense. But the girl friend's knowledge or lack thereof—the first element required for aiding and abetting—remains crucial. If she does not know what use her boyfriend is making of her apartment—if Zafiro did not know what was in the suitcase and did not know that Soto and Garcia were bringing a load of drugs to the apartment when the arrests took place—she is guilty neither of aiding and abetting nor of conspiracy.

To be proved guilty of aiding and abetting, still another element must be established: that the defendant desired the illegal activity to succeed. The purpose of this requirement is a little mysterious but we think it is to identify, and confine punishment to, those forms of assistance the prevention of which makes it more difficult to carry on the illegal activity assisted. A clerk in a clothing store who sells a dress to a prostitute knowing that she will be using it in plying her trade is not guilty of aiding and abetting. *United States v. Giovannetti*, 919 F.2d 1223, 1227 (7th Cir. 1990); Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 747 (3d ed. 1982). The sale makes no difference to her illegal activity. If the clerk didn't make the sale, she would buy, at some trivial added expense in time or money, an equivalent outfit from someone ignorant of her trade. That is where the requirement of proving the defendant's desire to make the illegal activity succeed cuts off liability. The boost to prostitution brought about by selling a prostitute a dress is too trivial to support an inference that the clerk actually *wants* to help the prostitute succeed in her illegal activity. If on the other hand he knowingly provides essential assistance, we can infer that he does want her to succeed, for that is the natural consequence of his deliberate act. It might be better in evaluating charges of aiding and abetting to jettison talk of desire and focus on the real concern, which is the relative dangerousness of different types of assistance, but that is an issue for another day.

In the case of conspiracy the additional element required for guilt is not desire for success, which can be assumed from proof that the defendant joined the conspiracy, but, precisely, the agreement. That element is not supplied by mere knowledge of an illegal activity either, let alone by mere association with other conspirators or mere presence at the scene of the conspiratorial deeds. *United States v. Williams*, *supra*; *United States v. Atterson*, *supra*.

So if all the government had in the way of evidence against Zafiro is that she and the drugs were both found in the apartment at the time of the arrest of her boyfriend and his two associates, a reasonable jury could not convict her of either conspiracy or aiding and abetting any more than it could have convicted the girl friend whose car was found to contain illegal drugs and who was not even charged (granted, she apparently had never used the car). Guilt by association is not a permissible theory of criminal liability even in the war against drugs. But there is more in this case. A qualified expert witness—an experienced drug enforcement officer—testified that drug dealers do not discuss or deliver large quantities of illegal drugs in the presence of innocent bystanders. When arrested, Zafiro was in the living room of her apartment with Martinez awaiting the delivery by Soto and Garcia of 55 pounds of cocaine, no doubt to be stashed in the apartment until sold. And in Zafiro's closet was a suitcase full of cocaine. It is unlikely that a girl friend would be allowed to think that a suitcase with many thousands of dollars worth of cocaine actually contained a load of flea powder or that a heavy box of cocaine really was full of kitty litter. The witness's testimony about the methods of drug dealers may have been untrue, but Zafiro's counsel presented no testimony to the contrary. And if Zafiro knew that her apartment was being used as a stash house, she was knowingly rendering material assistance to her codefendants and desired that their malefaction succeed.

Zafiro took the stand to defend herself. She denied knowing anything about Martinez's drug dealings. Obviously the jury disbelieved her denials. The government cannot force a defendant to take the stand, of course, but if he does and denies the charges and the jury thinks he's a liar, this becomes evidence of guilt to add to the other evidence. *Dyer v. MacDougall*, 201 F.2d 265, 269 (2d Cir. 1952) (L. Hand, J.). Concern has been expressed recently that "if negative inferences, based on demeanor evidence, were adequate in themselves to satisfy a rational juror of guilt beyond a reasonable doubt, appellate courts might

not be able to provide meaningful review of the sufficiency of evidence." *United States v. Jenkins*, 928 F.2d 1175, 1179 (D.C. Cir. 1991). Judge Hand had expressed the same concern in *Dyer v. MacDougall*, *supra*, 201 F.2d at 169. Such cases are unlikely to occur, however, for if there is no evidence of guilt other than what the defendant might supply by offering protestations of innocence that the jury disbelieved, he would have no reason to take the stand; he would be entitled to a directed acquittal at the close of the government's case. Zafiro's lawyer did move for directed acquittal then, but he does not cite the denial of that motion as error. We therefore need not decide whether, if Zafiro had not taken the stand, the testimony of the expert witness would have been enough to tip the scales of justice to guilt, given the heavy burden of proof that the government bears in criminal cases. That issue is moot. She testified, and on the basis of her demeanor and the expert testimony the jury was entitled to conclude that she knew what was in the suitcase and what was coming in the box. If she knew those things she knew that by providing her apartment for the storage of these containers she was aiding a drug conspiracy involving Martinez. No more was necessary to make her an aider and abettor of that conspiracy. Cf. *United States v. Percival*, 756 F.2d 600, 610-11 (7th Cir. 1985).

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

USCA 79004—Midwest Law Printing Co., Inc., Chicago—9-26-91—500

FILED
NOV 29 1989

United States District Court

NORTHERN District of ILLINOIS

EASTERN DIVISION

Sent for Microfilming
NOV 29 1989
Filmed on

UNITED STATES OF AMERICA

V.

SALVADOR GARCIA

(Name of Defendant)

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

Case Number 89 CR 165-4

Joseph Sib Abraham
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) one and five after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21 USC 846	Conspiracy to possess with intent to distribute cocaine, heroin, and marijuana	1
21 USC 841(a)(1)	Possession with intent to distribute cocaine	5

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☒ It is ordered that the defendant shall pay to the United States a special assessment of $ 100.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
546-90-1475

November 28, 1989
Date of Imposition of Sentence

Defendant's mailing address:
Metropolitan Correctional Center
Chicago, IL

Signature of Judicial Officer

NICHOLAS J. BUA, JUDGE
Name & Title of Judicial Officer

Defendant's residence address:
2604 Sea Breeze
El Paso, TX 77936

NOV 29 1989

November 28, 1989
Date

Appendix "A" 2

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE HUNDRED FIFTY-ONE (151) MONTHS.

IT IS FURTHER ORDERED that defendant be given credit for time already served.

☒ The Court makes the following recommendations to the Bureau of Prisons: That defendant be incarcerated at Oxford, Wisconsin.

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,
  ☐ at _____ a.m. / p.m. on _____.
  ☐ as notified by the Marshal.
☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons
  ☐ before 2 p.m. on _____.
  ☐ as notified by the United States Marshal.
  ☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: SALVADOR GARCIA
Case Number: 89 CR 165-4

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of
FIVE (5) YEARS

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

DOCKETED
DEC 18 1989

United States District Court

NORTHERN District of ILLINOIS
EASTERN DIVISION

Sent for Microfilming
DEC 18 1989
Filmed on

UNITED STATES OF AMERICA
V.
ALFONSO SOTO
(Name of Defendant)

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

Case Number 89 CR 165-3

Kenneth L. Cunniff
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) one, five and six after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21 USC 846	Conspiracy	1
21 USC 841(a)(1)	Possession with intent to distribute Cocaine	5 and 6

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____, and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☒ It is ordered that the defendant shall pay to the United States a special assessment of $ 150.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
319-64-7721

Defendant's mailing address:
3517 West 38th Street
Chicago, IL

Defendant's residence address:
Metropolitan Correctional Center
Chicago, IL 60605

December 14, 1989
Date of Imposition of Sentence

DEC 15 1989

Signature of Judicial Officer

NICHOLAS J. BUA, JUDGE
Name & Title of Judicial Officer

December 14, 1989
Date

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Appendix "B"

Defendant: ALFONSO SOTO
Case Number: 89 CR 165-3

Judgment—Page 2 of 4

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE HUNDRED FIFTY-ONE (151) MONTHS.

IT IS ORDERED that the defendant to be given credit for time already served.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,

☐ at _____ a.m. / p.m. on _____.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Judgment—Page 3 of 4

Defendant: ALFONSO SOTO
Case Number: 89 CR 165-3

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

NOV 20 1989
Filmed on
NOV 20 1989
DOCKETED
NOV 20 1989

United States District Court

NORTHERN District of ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA

V.

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

GLORIA ZAFIRO

Case Number 89 CR 165-1

(Name of Defendant)

THOMAS J. ROYCE
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) One (1) and acquitted as to counts 2,3 & 4 after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21 USC 846	Conspiracy to possess with intent to distribute cocaine, heroin and marijuana	1

The defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) Two (2), Three (3), and Four (4), and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☒ It is ordered that the defendant shall pay to the United States a special assessment of $ 50.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
354-50-4133

November 16, 1989
Date of Imposition of Sentence

Defendant's mailing address:
Chgo. Metropolitan Correctional Center
71 West Van Buren
Chicago, IL 60605

Signature of Judicial Officer

NICHOLAS J. BUA, U.S. DISTRICT JUDGE
Name & Title of Judicial Officer

Defendant's residence address:

November 16, 1989
Date

NOV 20 1989

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Appendix "C"

Defendant: GLORIA ZAFIRO
Case Number: 89 CR 165-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE-HUNDRED-FIFTY-ONE (151) MONTHS.

This term consists of terms of ONE-HUNDRED-FIFTY-ONE (151) MONTHS on Counts One, with credit for time served from February 22, 1989.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,

☐ at _____ a.m. / p.m. on _____.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: GLORIA ZAFIRO
Case Number: 89 CR 165-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

FIVE (5) YEARS.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.

Defendant: GLORIA ZAFIRO
Case Number: 89 CR 165-1

FINE WITH SPECIAL ASSESSMENT

The defendant shall pay to the United States the sum of $ 50.00, consisting of a fine of $ -0- and a special assessment of $ 50.00.

☒ These amounts are the totals of the fines and assessments imposed on individual counts, as follows:

A $50.00 special assessment as to the one (1) count convicted, for a TOTAL of $50.00.

This sum shall be paid ☒ immediately.
☐ as follows:

☒ The Court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☒ The interest requirement is waived.
☐ The interest requirement is modified as follows:

FILED
NOV 22 1989
Filmed on NOV 22 1989

United States District Court

NORTHERN District of ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA

V.

JOSE MARTINEZ

JUDGMENT INCLUDING SENTENCE UNDER THE SENTENCING REFORM ACT

Case Number 89 CR 165-2

(Name of Defendant)

Steven Decker
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____.
☒ was found guilty on count(s) one, two, three, and four after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Count Number(s)
21 USC 846	Conspiracy	1
21 USC 841(a)(1)	Possession with intent to distribute controlled substances	2,3,4

The defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.
☐ The mandatory special assessment is included in the portion of this Judgment that imposes a fine.
☒ It is ordered that the defendant shall pay to the United States a special assessment of $ 200.00, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of residence or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:
526-33-6127

November 21, 1989
Date of Imposition of Sentence

Defendant's mailing address:
Metropolitan Correctional Center
Chicago, Illinois

Signature of Judicial Officer

NICHOLAS J. BUA, JUDGE
Name & Title of Judicial Officer

Defendant's residence address:
3102 East Avenue
Berwyn, Illinois

November 21, 1989
Date

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Appendix "D"

Defendant: JOSE MARTINEZ
Case Number: 89 CR 165-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of TWO HUNDRED SIXTY-TWO (262) MONTHS.

It is further ordered that defendant be given credit for time already served.

☐ The Court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district,

☐ at _____ a.m. / p.m. on _____.

☐ as notified by the Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons

☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: JOSE MARTINEZ
Case Number: 89 CR 165-2

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS.

While on supervised release, the defendant shall not commit another Federal, state, or local crime and shall comply with the standard conditions that have been adopted by this court (set forth on the following page). If this judgment imposes a restitution obligation, it shall be a condition of supervised release that the defendant pay any such restitution that remains unpaid at the commencement of the term of supervised release. The defendant shall comply with the following additional conditions:

☐ The defendant shall pay any fines that remain unpaid at the commencement of the term of supervised release.